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8 WILLIAM J. HOFFMAN, Receiver

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 WILLIAM J. HOFFMAN, Court-
appointed permanent receiver for
13 Defendant Nationwide Automated
Systems, Inc., Relief Defendants Oasis
14 Studio Rentals, LLC, Oasis Studio
Rentals #2, LLC, Oasis Studio
15 Rentals #3, LLC, and their subsidiaries
and affiliates,

16 Plaintiff,

17 v.

18 GERALD EHRENS, WILMA EHRENS,
19 RIVIERA INVESTMENTS, L.P., a
Nevada limited partnership, FIRST
20 ABBY CORPORATION, a Nevada
corporation, AMGEST LTD. a Delaware
21 corporation,

22 Defendants.
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Case No. CV15-05747 SJO (FFMx)

NOTICE OF MOTION AND MOTION
FOR ENTRY OF DEFAULT
JUDGMENT BY COURT AS AGAINST
DEFENDANTS RIVIERA
INVESTMENTS, L.P., FIRST ABBY
CORPORATION, AND AMGEST LTD

Ctrm: 1 - 2nd Floor

Date: April 4, 2016

Time: 10:00 a.m.

Ctrm: 1 - 2nd Floor

Judge: Hon. S. James Otero

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on April 4, 2016, at 10:00 a.m., or as soon
 3 thereafter as this matter may be heard in Courtroom 1 of the above-entitled Court,
 4 located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff
 5 William J. Hoffman of Trigild, Inc., the Court-appointed permanent receiver for
 6 Nationwide Automated Systems, Inc., Oasis Studio Rentals, LLC, Oasis Studio
 7 Rentals #2, LLC, Oasis Studio Rentals #3, LLC, and their subsidiaries and affiliates,
 8 appointed by this Court in the Securities and Exchange Commission enforcement
 9 action styled as *Securities and Exchange Commission v. Nationwide Automated*
 10 *Systems, Inc., et al.*, United States District Court, Central District of California, Case
 11 No. 14-CV-07249-SJO (FFMx) ("SEC Action"), will and hereby does present his
 12 Motion to the Court for entry of default judgment as against Defendants Riviera
 13 Investments, L.P. ("Riviera Investments"), First Abby Corporation ("First Abby"),
 14 and Amgest LTD ("Amgest") (collectively, "Defaulted Defendants"). The clerk
 15 previously entered the default of Amgest on October 19, 2015. Similarly, the
 16 defaults of Riviera Investments and First Abby were entered by the clerk on
 17 December 30, 2015.

18 This Motion is based upon this Notice, the concurrently submitted
 19 declarations of William J. Hoffman and Tim C. Hsu, and the supporting exhibits,
 20 pleadings, and any oral or documentary evidence that may be presented at the time
 21 of this Motion's hearing.

22
 23 Dated: February 29, 2016

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP
 DAVID R. ZARO
 TED FATES
 TIM C. HSU

24
 25
 26 By: /s/ Tim C. Hsu

27 TIM C. HSU
 Attorneys for Receiver
 WILLIAM J. HOFFMAN
 28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This action was commenced on July 29, 2015 by Plaintiff William J. Hoffman of Trigild, Inc. ("Receiver"), the Court-appointed permanent receiver for Nationwide Automated Systems, Inc. ("NASI"), Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio Rentals #3, LLC, and their subsidiaries and affiliates (collectively with NASI, "Receivership Entities"), appointed by this Court in the SEC Action.

Despite proper service, Riviera Investments, First Abby, and Amgest failed to file any response or make any appearance in this action. As a consequence, the Receiver previously requested defaults to be entered as against Defaulted Defendants, which defaults were entered by the Clerk of this Court as to Amgest on October 19, 2015 (Dkt. No. 15), and as to Riviera Investments and First Abby on December 30, 2015 (Dkt. No. 33).¹

Given the entry of Defaulted Defendants' defaults, and their failure to respond or otherwise appear in this action, the Receiver hereby respectfully requests that default judgment be entered as against Defaulted Defendants in the amount as specified herein.

II. BACKGROUND AND RELEVANT FACTS

A. NASI Operated a Classic Ponzi Scheme.

This action involves the fraudulent transfers of investor funds to Gerald Ehrens, Wilma Ehrens, and Defaulted Defendants totaling \$2,772,616.50, which were raised by NASI from investors in a Ponzi scheme. *See* Declaration of William J. Hoffman ("Hoffman Decl.") ¶¶ 7-11. In particular, NASI raised money from

¹ The remaining defendants in this action include Gerald Ehrens and Wilma Ehrens who filed for bankruptcy on September 30, 2015, and thus this matter is stayed as against them pursuant to Bankruptcy Code until such time as the automatic stay is dissolved or relief from such stay is otherwise obtained. (Dkt No. 28.)

investors by selling them Automated Teller Machines ("ATMs"), leasing the ATMs back from investors, managing the ATMs for the investors, and paying the investors annual "rents" that were guaranteed to total at least 20% of the ATM purchase price. *Id.* at ¶¶ 7-8. In actuality, however, the Receivership Entities did not sell any ATMs, but instead fabricated and sold fictitious ATMs with fabricated serial numbers and locations. *Id.* The "rents" paid to investors, including to Defaulted Defendants, were paid from the amounts raised from other investors. *Id.* Thus, NASI operated a classic Ponzi scheme, and the funds paid to investors such as Defaulted Defendants, were paid with proceeds raised from other investors in the Ponzi scheme. *Id.* These allegations are further supported and confirmed by the results of the Receiver's investigation, admitted by the principal defendants through their Answers filed in the SEC Action, and admitted by NASI's principal, Joel Gillis, through his Statement of Facts filed in connection with his guilty plea in the related criminal action. *Id.*

B. Defaulted Defendants Received Profits and Commissions in Excess of \$1.8 Million.

From 2007 through 2014, and excluding amounts paid directly to Gerald and Wilma Ehrens, Defaulted Defendants together received a total of \$2,608,616.50 in investor funds paid by NASI from proceeds generated through the Ponzi scheme ("Payments from NASI"). *Id.* at ¶¶ 9-10. These payments were paid to Defaulted Defendants as purported returns on investment and commissions for referrals generated by Gerald Ehrens. *Id.* Although Riviera Investment is the only party that signed agreements with NASI to purchase the ATMs, payments of commissions for referrals generated by Gerald Ehrens were also made to Amgest and First Abby. *Id.* at ¶¶ 10-12.

Defaulted Defendants, in turn, paid a total of \$792,000 to NASI as deposits to purchase fictitious ATMs ("Deposit Amount"). *Id.* at ¶ 10. Accordingly, the net profit paid to Defaulted Defendant is \$1,816,616.50 ("Profit Amount"). *Id.* A table

summarizing the Deposit Amount, Payments from NASI, and the Profit Amount, as more fully detailed in the Receiver's Declaration and Exhibits submitted concurrently herewith, is as follows:

<u>Deposit/Payment</u>	<u>Payor/Payee</u>	<u>Amount</u>
Payments From NASI	Riviera Investment	\$734,616.50
Payments From NASI	Amgest	\$980,500.00
Payments From NASI	First Abby	<u>\$893,500.00</u>
	Total Payments from NASI:	\$2,608,616.50
Deposit Amount	Riviera Investment	<u>(\$792,000.00)</u>
	Total Profit Amount:	\$1,816,616.50

Id. at ¶¶ 10-11.

As alleged in the Receiver's Complaint, Defaulted Defendants had no business dealings with NASI apart from transactions relating to the purchase and leasing of fictitious ATMs and provided no services or other value to the Receivership Entities other than the Deposit Amount. *Id.* at ¶ 13. As such, and as explained herein, the Receiver is entitled to judgment on his claims for disgorgement of the Profit Amount.

C. The Receiver Obtained Authority to Pursue Clawback Claims and Filed This Action Seeking Disgorgement of the Profit Amount.

After obtaining authority from this Court in the SEC Action to file actions seeking recovery of funds paid to profiting investors, the Receiver filed the instant action against the Ehrens and Defaulted Defendants on July 29, 2015. Hoffman Decl. ¶ 3. The Receiver then attempted to serve the Summons and Complaint on all defendants. *Id.* at ¶ 4. Although the Receiver successfully served Amgest on September 14, 2015, through personal service upon its President, Bruce Gardiner, the Receiver could not effectuate personal service on the Ehrens, Riviera Investment

1 and First Abby despite multiple attempts to do so. *Id.* The Receiver thus sought and
2 obtained authority from this Court to serve the Ehrens, Riviera Investment and First
3 Abby by way of publication. *Id.*

4 As described in the Receiver's motion to serve by publication, it appeared
5 from multiple stake-outs conducted at the Ehren's residence that the Ehrens were
6 purposefully evading the Receiver's attempts to personally serve the Summons and
7 Complaint. *See* Declaration of Tim C. Hsu ("Hsu Decl.") ¶¶ 3-4. In addition, copies
8 of the Summons and Complaint were emailed to Gerald Ehrens directly, and even
9 though read receipts were obtained indicating the email was opened, there was no
10 response received. *Id.* On October 27, 2015, this Court granted authorization to
11 serve by publication, and service by publication was completed as to the Ehrens,
12 Riviera Investment and First Abby on November 25, 2015. *Id.* Shortly before
13 authorization was granted to serve by publication, the Ehrens filed for individual
14 bankruptcy on September 30, 2015, and thus this action is stayed as against them.
15 *Id.* at ¶ 5. Notably, the Ehren's schedules filed in support of their bankruptcy
16 confirm that they own the Defaulted Defendants and have known of this action since
17 at least September 30, 2015. *Id.*

18 Despite personal service of the Summons and Complaint on Amgest, and
19 subsequent service by publication on Riviera Investment and First Abby as
20 authorized by this Court, Defaulted Defendants failed to answer the Receiver's
21 Complaint or otherwise appear in this action. *See* Hoffman Decl. ¶ 5. Accordingly,
22 on October 16, 2015, the Receiver requested entry of default as against Amgest,
23 whose default was entered on October 19, 2015. *Id.* Similarly, the Receiver
24 requested the entry of default as against Riviera Investment and First Abby on
25 December 23, 2015, and their defaults were entered by the Clerk of this Court on
26 December 30, 2015. *Id.*

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1 **III. LEGAL ARGUMENT**

2 **A. The Receiver is Entitled to Judgment on His Claims**

3 On an application for entry of default judgment, all well-pleaded allegations
4 in the complaint, except those relating to damages, are deemed to be admitted. *See*
5 *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Here, the
6 Receiver alleges claims for fraudulent transfer under the California Uniform
7 Fraudulent Transfer Act, Cal. Civ. Code section 3439, *et seq.*, unjust enrichment and
8 constructive trust, seeking judgment against Defaulted Defendants for disgorgement
9 of the Profit Amount.

10 In order to prevail on his claim for fraudulent transfer, the Receiver need only
11 demonstrate that Defaulted Defendants received the profit payments from NASI,
12 and that these payments were made with the actual or constructive intent to defraud.
13 *See Donell v. Kowell*, 533 F.3d 762, 770 (9th Cir. 2008) ("Where causes of action
14 are brought under UFTA against Ponzi scheme investors, the general rule is that to
15 the extent innocent investors have received payments in excess of the amounts of
16 principal that they originally invested, those payments are avoidable as fraudulent
17 transfers.") (citing *Scholes v. Lehmann*, 56 F.3d 750, 757-58 [7th Cir. 1995]). The
18 element of intent to defraud is satisfied where the profit payments were made
19 pursuant to a Ponzi scheme. *See, Donell v. Kowell*, 533 F.3d at 770 ("[T]he mere
20 existence of a Ponzi scheme is sufficient to establish actual intent to defraud.").

21 Here, as shown by the evidence of payments to Defendants submitted
22 herewith along with the Receiver's declaration, there can be no dispute that
23 Defaulted Defendants received a total of \$2,608,616.50 in payments of investor
24 funds from NASI over a number of years, offset by deposits made for their
25 purported investments in the fictitious ATMs in the amount of \$792,000.00. Thus,
26 Defaulted Defendants received a total of \$1,816,616.50 in net profits.

27 In addition, the payments made to Defaulted Defendants were made pursuant
28 to the Ponzi scheme perpetrated by the principal defendants in the SEC Action,

1 Mr. Gillis and Mr. Wisher. In particular, Defaulted Defendants received these
2 payment as purported profits generated on fictitious ATMs purchased by Riviera
3 Investments and as commissions for new investors referred to NASI by Gerald
4 Ehrens. Moreover, the investor funds used to pay Defaulted Defendants were
5 generated from the proceeds of the Ponzi scheme operated through NASI as
6 admitted by Mr. Gillis and Wishner. Accordingly, the evidence demonstrates that
7 NASI operated as a Ponzi scheme, and the payments to Defaulted Defendants were
8 paid from proceeds generated through that scheme. As such, the payments to
9 Defaulted Defendants constitute fraudulent transfers under California Civil Code
10 section 3439.04 and, because no value was provided in exchange for the payments
11 other than the Deposit Amount, the Receiver is therefore entitled to recover the
12 entire Profit Amount Defaulted Defendants received from NASI.

13 In addition, the Receiver is also entitled to judgment against Defaulted
14 Defendants on his claims for unjust enrichment and constructive trust. In California,
15 "[t]he elements for a claim of unjust enrichment are 'receipt of a benefit and unjust
16 retention of the benefit at the expense of another.'" *Lyles v. Sangadeo-Patel*, 225
17 Cal.App.4th 759 (2014). Similarly, constructive trusts are "created by operation of
18 law as a remedy to compel the transfer of property from the person wrongfully
19 holding it to the rightful owner." *Internet Direct Response, Inc. v. Buckley*, 2011
20 U.S. Dist. LEXIS 28344, *23 (C.D. Cal. 2011) (internal quotations omitted). Here,
21 Defaulted Defendants received the Profit Amount from NASI and provided no value
22 in return. The funds used to pay the Profit Amount to Defaulted Defendants were
23 obtained from other investors in the Ponzi scheme. Thus, Defaulted Defendants
24 have received the benefit of the Profit Amount and is unjustly retaining this benefit
25 at the expense of all other investors in NASI, the vast majority of whom did not
26 receive any profits on their purported investments. Accordingly, the Receiver is
27 entitled to judgment on his claims for unjust enrichment and constructive trust.

28

B. Evidence Submitted Herewith Demonstrate the Procedural Requirements for Default Judgment Are Satisfied.

Pursuant to F.R.C.P. Rule 55(b)(2), default judgment may be entered against a defendant so long as the plaintiff establishes: (1) the defendant has been served with the summons and complaint, and default was entered for their failure to appear; (2) the defendant is not a minor nor an incompetent person; and (3) if the defendant has appeared, that the defendant was provided with written notice of the application for default judgment at least seven days before the hearing. *See* F.R.C.P. Rule 55(b)(2). Similarly, under Local Rule 55-1, applications for entry of default judgment must be accompanied by a declaration in compliance with the Federal Rules of Civil Procedure Rule 55(b)(1) and/or (2) that include the following information:

- (a) When and against what party the default was entered;
- (b) The identification of the pleading to which default was entered;
- (c) Whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative;
- (d) That the Servicemembers Civil Relief Act (50 U.S.C. App. § 521) does not apply; and
- (e) That notice has been served on the defaulting party, if required by F.R.Civ.P. 55(b)(2).

See U.S.D.C., Central District of Cal., Local Civil Rule 55-1, last amended December 1, 2015.

Here, as reflected in the declarations of the Receiver and his counsel submitted concurrently herewith and in the exhibits attached thereto, Amgest was properly served with the Summons and Complaint on September 14, 2015, by way of personal service upon its President, Bruce Gardiner, but has failed to appear in this action. *See* Hoffman Decl. ¶¶ 4-5; *see also*, Hsu Decl. ¶ 3. Riviera Investment

1 and First Abby were also properly served on November 25, 2015 by way of
 2 publication in accordance with Cal. Code of Civil Procedure Section 415.50 and
 3 pursuant to this Court's Order authorizing service by publication entered October 27,
 4 2015. *Id.* Notwithstanding proper service, and as of the date of this Motion,
 5 Defaulted Defendants have failed to file any responsive pleading or otherwise
 6 appear in this action. *Id.* Accordingly, on October 16, 2015 and December 23,
 7 2015, the Receiver requested defaults be entered as against Amgest, Riviera
 8 Investment, and First Abby. *Id.* Pursuant to the Receiver's requests, Amgest's
 9 default was entered by the Clerk of this Court on October 19, 2015, and the defaults
 10 of Riviera Investment and First Abby were entered by the Clerk on December 30,
 11 2015. *Id.*

12 Defaulted Defendants are each legal entities and not natural persons, and as
 13 such, are not minors or incompetent persons, or in military service or otherwise
 14 exempted from default judgment under the Servicemembers Civil Relief Act.
 15 Hoffman Decl. ¶ 6. In addition, notwithstanding the fact that Defaulted Defendants
 16 have never made any appearance in this action, and thus are not entitled to notice of
 17 this Motion pursuant to Local Rule 55-1(e) or F.R.C.P. Rule 55(b)(2), a copy of this
 18 Motion is being sent to Defaulted Defendants concurrently with the filing of this
 19 Motion by way of overnight mail. *See* F.R.C.P. Rule 55(b)(2) (requiring service of
 20 notice only where "the party against whom a default judgment is sought has
 21 appeared personally or by a representative"); *see also*, Hsu Decl. ¶ 6.

22 Accordingly, each of the procedural requirements under Local Rule 55-1 for
 23 entry of default judgment as against the Defaulted Defendants have been satisfied.

24 **C. Analysis of the Eitel Factors Weighs in Favor of Entry of Default**
 25 **Judgment.**

26 It is well within this Court discretion to enter default judgment against
 27 Defaulted Defendants. *See Treglia v. Kernan*, 2013 U.S. Dist. LEXIS 53435 *4
 28

1 (N.D. Cal. 2013). In exercising such discretion to enter default judgment, the court
 2 may consider the following seven factors:

- 3 (1) the possibility of prejudice to the plaintiff if default
 judgment is not entered,
- 4 (2) the merits of plaintiff's substantive claims,
- 5 (3) the sufficiency of the complaint,
- 6 (4) the sum of money at stake in the action,
- 7 (5) the possibility of a dispute concerning material facts,
- 8 (6) whether the default was due to excusable neglect, and
- 9 (7) the strong policy favoring decisions on the merits.

10 *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). These factors should
 11 be weighed in light of all the circumstances of the action, and the well-pleaded
 12 factual allegations of the complaint, except those relating to damages, are deemed to
 13 be true. *See TeleVideo Systems, Inc., supra*, 826 F.2d at 917.

14 Here, the prejudice to the Receiver if default judgment is not entered is great.
 15 The Receiver has expended significant time and resources in researching and
 16 gathering evidence for profit payments made to Defaulted Defendants, and in
 17 litigating this action which was further complicated by the need to serve by
 18 publication. More importantly, even though service has been completed,
 19 Defendants have failed to make any appearance in this action, and thus, absent entry
 20 of default judgment, the Receiver would be left with no recourse for recovery of the
 21 fraudulent transferred funds. *See PepsiCo, Inc. v. California Security Cans*, 238
 22 F.Supp.2d 1172, 1177 (C.D. Cal. 2002) (finding potential prejudice to plaintiff
 23 where absent default judgment, there will likely be no alternative recourse for
 24 recovery). Accordingly, the Receiver would suffer great prejudice if default
 25 judgment was denied, and thus this factor weighs heavily in favor of the entry of
 26 default judgment.

27 The second and third *Eitel* factors focus on the merits of a plaintiff's
 28 substantive claim and the sufficiency of the complaint. Effectively, these two
 factors require that "a plaintiff 'state a claim on which the plaintiff may recover.'" *PepsiCo*, 238 F.Supp.2d at 1175. Here, as shown by the evidence submitted,

1 Defaulted Defendants received the Profit Amount totaling \$1,816,616.50, which
2 was derived from investor proceeds generated in NASI's Ponzi scheme. Defaulted
3 Defendants did not provide any value other than their initial deposits paid to NASI
4 to purchase fictitious ATMs. Thus, the Receiver is entitled to judgment on the
5 substantive merits of his claims against Defaulted Defendants, and these two factors
6 therefore weigh in favor of the entry of default judgment.

7 As for the fourth factor, "the court must consider the amount of money at
8 stake in relation to the seriousness of [the] [d]efendant's conduct." *PepsiCo*, 238
9 F.Supp.2d at 1176. Here, although the amount sought to be recovered by the
10 Receiver is significant, Defaulted Defendants' conduct is serious in that Defaulted
11 Defendants were used by Gerald and Wilma Ehrens to receive in excess of \$2.6
12 million in investor proceeds generated from the Ponzi scheme, of which more than
13 \$1.8 million consist of purported profits and commissions paid for referrals of new
14 investors to the scheme. Thus, this factor also weighs in favor of entry of default
15 judgment.

16 The fifth *Eitel* factor concerns the likelihood of a dispute regarding the
17 material facts surrounding the case. Here, as set forth herein, there can be no
18 reasonable dispute that Defaulted Defendants received the payments for profit and
19 commissions from NASI and netted a Profit Amount in excess of their deposits
20 totaling \$1,816,616.50. In addition, Defaulted Defendants cannot dispute that NASI
21 operated a Ponzi scheme and that the payments made to Defaulted Defendants were
22 derived from proceeds generated from the scheme, for which no value was provided
23 in return other than the Deposit Amount. Accordingly, this factor weighs in favor of
24 entering default judgment.

25 The sixth *Eitel* factor considers the possibility of excusable negligence in
26 failing to respond or appear. As explained above, copies of the Summons and
27 Complaint were personally served on the officer for Amgest, and thus it is clearly
28 aware of the lawsuit. In addition, although service for Riviera Investment and First

1 Abby were completed by publication, copies of the Summons and Complaint were
 2 also emailed to Gerald Ehrens and read receipts indicate the email was opened.
 3 Gerald and Wilma Ehrens have also since filed for bankruptcy and, through that
 4 filing, indicated that they own Defaulted Defendants and are aware of the instant
 5 lawsuit. However, the bankruptcy is for the Ehrens individually, does not affect the
 6 Receiver's claims against Defaulted Defendants, and there is therefore no excuse for
 7 Defaulted Defendants' failure to defend or otherwise appear in this action. As such,
 8 this factor also weighs heavily in favor of entering default judgment.

9 Finally, even though seventh factor concerning public policy favors a decision
 10 on the merits, "this preference, standing alone, is not dispositive." *PepsiCo*, 238
 11 F.Supp.2d at 1177. Here, each of the other factors weighs in favor of entering
 12 default judgment, and thus default judgment should be entered in favor of the
 13 Receiver.

14 **D. Judgment Should Be Entered Against Defaulted Defendants**
 15 **Jointly and Severally.**

16 Defaulted Defendants together received the Profit Amount paid to them as
 17 purported profits from the fictitious ATMs and commissions generated from
 18 referring other investors to NASI. (See Hoffman Decl. ¶¶ 9-12.) Although Riviera
 19 Investment was the only Defaulted Defendant that entered into agreements to
 20 purchase ATMs, significant amounts of commissions were generated by Gerald
 21 Ehrens referrals and paid to Amgest and First Abby. *Id.* Thus, Defaulted
 22 Defendants were used by Mr. Ehrens together to not only to receive profits paid by
 23 NASI, but also to receive commissions for referrals of other investors to NASI. As
 24 such, Defaulted Defendants in receiving the fraudulent transfers acted as joint
 25 tortfeasors, and joint and several liability on default judgment is appropriate. *See,*
 26 *e.g., Diamond v. Digital Interactive Association, Inc.*, 302 Fed.Appx. 574, 576 (9th
 27 Cir. 2008) (analyzing joint and several liability for fraudulent transfer under Florida
 28 law, and finding that because fraudulent transfer is a tort and defendants acted in

concert to perform a fraudulent transfer, that joint and several liability was an appropriate remedy).

In the alternative, the Court should enter default judgment against each of the Defaulted Defendants in the amount of profits as calculated by actual payments and deposits. In particular, and as shown by the cancelled checks submitted along with the Receiver's declaration, Amgest received a total of \$980,500.00 from NASI and paid no offsetting deposit for an initial investment. Hoffman Decl. ¶¶ 9-12. Thus, default judgment should be entered against Amgest in that amount. Similarly, First Abby received a total of \$893,500.00 with no offsetting deposit, and default judgment should be entered against it in that amount. *Id.* Finally, although Riviera Investment received a total of \$734,616.50, it paid deposits to NASI totaling \$792,000.00, and thus, to the extent this Court is not inclined to enter judgment jointly and severally, the Receiver does not request default judgment as against Riviera Investment.

IV. A FORMAL COURT HEARING IS NOT REQUIRED

A formal court hearing is not required for entry of the requested default judgment and this Court has wide latitude to forego such a hearing where the Court is already familiar with the issues and ample evidence exists in the record to substantiate the calculation of damages. *See* Fed. Rules Civ. Proc. Rule 55(b)(2); *see also Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981) (unpub.) (explaining that a default judgment for money may be entered without hearing if the amount claimed is a liquidated sum or capable of mathematical calculation).

Here, the Court should forego a formal hearing on this Motion because the amount of damages, *i.e.* the Profit Amount, is capable of calculation as set forth in the evidence of payment submitted with the Receiver's declaration, and because this Court is very familiar with the background facts and legal issues, which are the same as those in numerous other related clawback actions brought by the Receiver and pending before the Court. Moreover, a hearing would involve considerable

1 administrative expense and therefore reduce the net recovery from the action for the
 2 benefit of net losers in the NASI Ponzi scheme. Accordingly, the Receiver
 3 respectfully requests the Court exercise its discretion and enter judgment in favor of
 4 the Receiver as against Defaulted Defendants, jointly and severally, in the Profit
 5 Amount totaling \$1,816,616.50.

6 **V. CONCLUSION**

7 For the reasons set forth herein, the Receiver respectfully requests that this
 8 Motion be granted and default judgment be entered in favor of the Receiver as
 9 against Defaulted Defendants, jointly and severally, in the Profit Amount totaling
 10 \$1,816,616.50. Alternatively, default judgment should be entered against Amgest in
 11 the amount of \$980,500.00 and against First Abby in the amount of \$893,500.00.

12
 13 Dated: February 29, 2016

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP
 DAVID R. ZARO
 TED FATES
 TIM C. HSU

14
 15
 16 By: /s/ Tim C. Hsu

TIM C. HSU
 Attorneys for Receiver
 WILLIAM J. HOFFMAN